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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 51

[NPS-WASO-15398; PX.XVPAD0517.00.1]

**RIN 1024-AE22**

#### Concession Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend our concessions contracts regulations to clarify that the Director may amend or extend a prospectus soliciting proposals for a concession contract prior to and including the proposal due date; and award a temporary concession contract when necessary to continue visitor services provided under an extended concession contract. We are also updating consolidated information collection requirements.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** You may submit your comments, identified by Regulation Identifier Number (RIN) 1024-AE22, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail to: Debra Hecox, Commercial Services Program, National Park Service, 12795 West Alameda Pkwy, Lakewood, CO 80228.

*Instructions:* All submissions received must include the agency name and RIN for this

rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information, see the **Public Participation** heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jo Pendry, National Park Service Acting Chief of Commercial Services, by telephone: 202-513-7156 or email: [jo\\_pendry@nps.gov](mailto:jo_pendry@nps.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The National Park Service (NPS) issues concession contracts to provide commercial visitor services in over 150 units of the National Park System under the authority of the NPS Concessions Management Improvement Act of 1998 (Pub. L. 105-391; 16 U.S.C. 5951-5966 (1998 Act)). Title 36 CFR Part 51, adopted in 2000, implements the 1998 Act. The proposed rule would clarify an ambiguity in 36 CFR 51.11, eliminate outdated procedural restrictions in 36 CFR 51.24, and update 36 CFR 51.104. You may view information about the NPS Commercial Services Program at <http://concessions.nps.gov>.

### ***Amending or Extending a Prospectus (36 CFR 51.11)***

Title 36 CFR 51.11 describes when the NPS may amend or extend the solicitation period for a prospectus seeking proposals for a concession contract opportunity. As written, the regulation could be interpreted to limit the agency's needed ability to amend or extend a solicitation on the date the solicitation period expires. The proposed rule would clarify that the

NPS may amend a prospectus or extend the submission date prior to and on the proposal due date.

***Awarding a Temporary Concession Contract (36 CFR 51.24)***

Under the 1998 Act, the NPS may award temporary concession contracts for a term not to exceed three years in order to avoid an interruption of services to the public. (16 U.S.C. 5952(11)).

The current 36 CFR 51.24 describes the circumstances under which the NPS may award a temporary concession contract. When the NPS promulgated 36 CFR Part 51 in its implementation of the 1998 Act, it provided in § 51.24 that, except in limited circumstances, the Director could not issue a temporary concession contract to continue visitor services provided under an extended contract. This regulatory restriction was the result of a policy decision of the NPS rather than a requirement of the 1998 Act. Although the NPS has successfully awarded replacement contracts within the term limits of contracts and authorized extension periods, the inventory of concession contracts currently includes several extended, complex contracts with respect to which the NPS may need the flexibility to award a temporary contract upon contract expiration in order to assure that visitor services continue uninterrupted.

The proposed rule would amend § 51.24(a) to provide this flexibility. The NPS anticipates it would exercise this authority sparingly and only when the award of a temporary contract is the only practical alternative to an interruption of visitor services.

In addition, the NPS proposes the deletion of the text of 36 CFR 51.24(b) in its entirety but with its current last sentence moved to be the last sentence in the amended § 51.24(a) for purposes of determining the existence of a preferred offeror when awarding a temporary concession contract to continue services under an extended concession contract. The current §

51.24(b) only applies to contracts that were in effect as of November 13, 1998, and that either had been extended as of that date or were due to expire by December 31, 1998, and were subsequently extended. There are no longer any existing NPS concession contracts that fall within these limitations and this provision is no longer needed.

Accordingly, we would make two conforming amendments. We are proposing to delete the current reference to § 51.24(b) in § 51.22, and we are also proposing to revise the current reference to § 51.24(b) stated in § 51.24(c) and replace it with a reference to § 51.24(a).

***Update to OMB Approval of Information Collection (36 CFR 51.104)***

In November 2013, OMB approved the NPS request to consolidate the information collection requirements associated with applying for and operating NPS concessions (previously approved under four separate control numbers: 1024-0029, 1024-0125, 1024-0126, and 1024-0231) into one single control number, 1024-0029. Upon receiving OMB approval for the renewal and consolidation of 1024-0029, the NPS discontinued OMB Control Numbers 1024-0125, 1024-0126, and 1024-0231.

**Compliance with Other Laws, Executive Orders, and Department Policy**

***Regulatory Planning and Review (Executive Orders 12866 and 13563).***

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that

reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (RFA).*

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled "Economic Analysis of the Proposed Rulemaking to Amend the Concession Contract Regulations of the National Park Service" which can be viewed online at <http://concessions.nps.gov/regulations.htm>.

*Small Business Regulatory Enforcement Fairness Act (SBREFA).*

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Administrative Procedure Act.*

This proposed rule is available for public review and comment for a period of 30 days. While the NPS would typically provide a 60-day comment period for such rulemakings, good cause exists for the shortened comment period because the NPS is facing the possibility that, due

to contracting delays, it may this year have expiring concession contracts that it has no authority to extend further. This situation could result in closure of visitor facilities at affected parks and thereby deprive park area visitors of needed concession services. This comment period will still allow public participation and NPS review of the comments in a time frame that would allow promulgation of a final rule that could allow the NPS to enter into temporary contracts for those expiring contracts without an interruption in visitor services this year. This will keep visitor services open, private sector businesses operating, and avoid employee layoffs. The NPS does not anticipate that the changes in this proposed rule will generate significant controversy and public comment. As a result, the NPS believes that the public benefits of promulgating this rule earlier than normal will outweigh any speculative costs that may be associated with shortening the comment period.

*Unfunded Mandates Reform Act (UMRA).*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630).*

This rule does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

*Federalism (Executive Order 13132).*

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

A Federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988).*

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

*Consultation with Indian Tribes (Executive Order 13175 and Department Policy).*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined it has no substantial direct effects on federally recognized Indian tribes and consultation under the Department's tribal consultation policy is not required.

*Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).*

This proposed rule does not contain new collections of information that require approval by the Office of Management and Budget under the PRA. The rule would not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations. OMB has reviewed and approved the information collection requirements associated with concessions and assigned OMB Control No. 1024-0029, which

expires November 30, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA).*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*Effects on the Energy Supply (Executive Order 13211).*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Clarity of this rule.**

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Have logical organization;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Have short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments



should specifically identify where we could improve. For example, you should tell us the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

**Drafting Information:** The primary author of this regulation was Debra Hecox, National Park Service, Commercial Services Program, Washington, DC.

### **Public Participation.**

The Department of the Interior, whenever practicable, affords the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. We must receive all comments by midnight of the close of the comment period. We will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

### **Public Availability of Comments.**

Before including your address, phone number, email address, or other personal identifying information in your comment, please know that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to comply with your request.

### **List of Subjects in Part 51**

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 51 as follows:

## **PART 51—CONCESSION CONTRACTS**

1. Revise the authority citation for Part 51 to read as follows:

**Authority:** 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

2. Revise § 51.11 to read as follows:

### **Subpart C—Solicitation, Selection, and Award Procedures**

#### **§ 51.11 May the Director amend, extend, or cancel a prospectus of solicitation?**

The Director may amend a prospectus or extend the submission date, or both, prior to and on the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited solicitation for a concession contract.

3. In § 51.22, revise the first sentence to read as follows:

#### **§ 51.22 When may the Director award the concession contract?**

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more than 10 years in duration, the Director must submit the concession contract to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. \* \* \* \* \*

4. In § 51.24:

- A. Revise paragraph (a);
- B. Remove and reserve paragraph (b); and
- C. Revise paragraph (c).

The revisions to read as follows:

### **Subpart D—Non-Competitive Award of Concession Contracts**

#### **§ 51.24 May the Director award a temporary concession contract without a public solicitation?**

(a) Notwithstanding the public solicitation requirements of this part, the Director may non-competitively award a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate – *e.g.*, the Director may award one temporary contract with a three year term; two consecutive temporary contracts, one with a two year term and one with a one year term; or three consecutive temporary contracts with a term of one year each – to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may be awarded to continue visitor services that were provided under an extended concession contract pursuant to the terms and conditions in this paragraph. A temporary concession contract awarded under the authority of the prior sentence will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(b) [Reserved]

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract that replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under an extended concession contract that was replaced by a temporary concession contract under paragraph (a) of this section.

5. Revise § 51.104 to read as follows:

## **Subpart M—Information Collection**

### **§ 51.104 Has OMB approved the collection of information?**

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this Part and assigned OMB Control No. 1024-0029. We use this information to administer the National Park Service concessions program, including solicitation, award, and administration of concession contracts. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, National Park Service, 1849 C Street, NW. (2601), Washington, D.C. 20240.

Dated: July 25, 2014

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Rachel Jacobson  
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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